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October 1, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

via Express Delivery

Hon. Arthur I. Steinberg
Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W., Room 1-C861
Washington, DC 20554

Re: EB Docket No. 00-156
FCC v. Ronald Brasher, *et. al.*
Amended Proposed Findings of Fact and Conclusions of Law

Dear Hon. Steinberg:

On behalf of Ronald Brasher, Patricia Brasher and DLB Enterprises, Inc. d/b/a Metroplex Two-Way, please find enclosed herewith an amended Proposed Findings of Fact and Conclusions of Law. This document has been amended from the original due to errors in the transcript as provided to Defendants by Heritage Reporting Company. Defendants have revised their original Proposed Findings of Fact and Conclusions of Law only to the extent that citations differ from the revised transcript recently provided to Defendants by Heritage.

With the consent of the presiding judge, Defendants hereby refile their Proposed Findings of Fact and Conclusions of Law. If you have any questions or concerns regarding the foregoing, please do not hesitate to give us a call.

Very truly yours,

Michael L. Higgs, Jr.

MLH:sdl

cc: Judy Lancaster
Bill Knowles-Kellett

Lawson Pedigo
Ronnie Wilson

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT - 1 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Ronald Brasher)
Licensee of Private Land Mobile Stations)
WPLQ202, KCG967, WPLD495, WPKH771,)
WPKI739, WPKI733, WPKI707, WIL990,)
WPLQ475, WPLY658, WPKY903, WPKY901,)
WPLZ533, WPKI762, and WPDU262)
Dallas/Fort Worth, Texas)
)
Et al.)
)

EB DOCKET NO. 00-156

To: Administrative Law Judge
Hon. Arthur I. Steinberg

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

On Behalf of:

RONALD D. BRASHER
PATRICIA A. BRASHER
DLB ENTERPRISES, INC. d/b/a
METROPLEX TWO-WAY

Counsel:

MICHAEL L. HIGGS, JR., ESQ.
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Summary

Defendants hereby submit jointly their Proposed Findings of Fact and Conclusions of Law in the instant matter. Herein defendants demonstrate that the Bureau has not met the evidentiary standard for the purpose of demonstrating, based on a preponderance of the evidence, that defendants have engaged in forgery, wilfully caused an abuse of the Commission's processes, engaged in misrepresentation, failed to be candid with the Commission, caused an unauthorized transfer of control of the subject licenses, or have caused a violation of the real party in interest rules and policies of the agency. To the contrary, these findings and conclusions demonstrate that defendants have not violated either the letter or the spirit of the Commission's rules, excepting a singular lapse in judgement for which defendants took affirmative steps to correct.

Based on the contents of this document, which is fully supported by the testimony and record evidence produced at trial, defendants respectfully request that this Court deny the Bureau's request for sanctions, forfeitures, revocation and/or disqualification.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Ronald Brasher

Licensee of Private Land Mobile Stations

WPLQ202, KCG967, WPLD495, WPKH771,

WPKI739, WPKI733, WPKI707, WIL990,

WPLQ475, WPLY658, WPKY903, WPKY901,

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Dallas/Fort Worth, Texas

Et al.

EB DOCKET NO. 00-156

To: Administrative Law Judge
Hon. Arthur I. Steinberg

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Ronald M. Brasher, Patricia Brasher, and DLB Enterprises, Inc. d/b/a Metroplex Two-Way ("Metroplex"), by and through counsel, pursuant to 47 C.F.R. §§ 1.263 and 1.264, hereby file jointly their Proposed Findings of Fact and Conclusions of Law in the above captioned matter:

PROPOSED FINDINGS OF FACT

1. Patricia Brasher (hereinafter “Pat”) is the President and majority shareholder of Metroplex, wife of Ronald Brasher, sister of Norma Sumpter, sister of Carolyn Lutz, mother of David Brasher, mother-in-law of Diane Brasher, sister of Thomas Lewis, daughter-in-law of O.C. Brasher and Ruth Brasher nee Bearden, sister-in-law of Jim Sumpter, aunt of Jennifer Hill and Melissa Sumpter, and niece by marriage of Ed Bearden. (EB Ex. 19.)
2. Ronald Brasher (hereinafter “Ron”) is the Treasurer and minority shareholder of Metroplex, husband of Pat Brasher, brother-in-law of Norma Sumpter and Carolyn Lutz, father of David Brasher, father-in-law of Diane Brasher, brother-in-law of Thomas Lewis and Jim Sumpter, son of O.C. Brasher and Ruth Brasher nee Bearden, uncle by marriage of Jennifer Hill and Melissa Sumpter, and nephew of Ed Bearden. (EB Ex. 19.)
3. Diane Brasher (hereinafter “Diane”) is the Secretary of Metroplex, wife of David Brasher, daughter-in-law of Ron and Pat Brasher, niece by marriage of Jim Sumpter and Norma Sumpter, niece by marriage of Carolyn Lutz and Thomas Lewis, granddaughter in law by marriage of O.C. Brasher and Ruth Brasher nee Bearden, cousin by marriage to Jennifer Hill and Melissa Sumpter and grandniece by marriage of Ed Bearden. (EB Ex. 19.)
4. David Brasher (hereinafter “David”) is Vice President of Metroplex, son of Ron and Pat Brasher, husband of Diane Brasher, nephew of Norma and Jim Sumpter, nephew of Carolyn Lutz and Thomas Lewis, grandson of O.C. Brasher and Ruth Brasher nee Bearden, cousin of Jennifer Hill and Melissa Sumpter, and great-nephew of Ed Bearden. (EB Ex. 19.)

5. Jim Sumpter (hereinafter “Jim”) is the former accountant for Metroplex, husband of Norma Sumpter, brother-in-law of Ron and Pat Brasher, uncle by marriage of Diane and David Brasher, brother-in-law of Carolyn Lutz and Thomas Lewis, and father of Jennifer Hill and Melissa Sumpter. (EB Ex. 19.)
6. Norma Sumpter (hereinafter “Norma”) is the wife of Jim Sumpter, sister of Pat Brasher and Carolyn Lutz, mother of Jennifer Hill and Melissa Sumpter, sister of Thomas Lewis, aunt of David Brasher, and aunt by marriage of Diane Brasher. (EB Ex. 19.)
7. Jennifer Hill (hereinafter “Jennifer”) is the daughter of Jim and Norma Sumpter, niece of Pat Brasher, niece by marriage of Ron Brasher, sister of Melissa Sumpter, cousin of David Brasher, cousin by marriage of Diane Brasher, and niece of Carolyn Lutz and Thomas Lewis. (EB Ex. 19.)
8. Melissa Sumpter (hereinafter “Melissa”) is the daughter of Jim and Norma Sumpter, niece of Pat Brasher, niece by marriage of Ron Brasher, sister of Jennifer Hill, cousin of David Brasher, cousin by marriage of Diane Brasher, and niece of Carolyn Lutz and Thomas Lewis. (EB Ex. 19.)
9. Carolyn Lutz (hereinafter “Ms. Lutz”) a.k.a. “Sue” is the former Office Manager of Metroplex, the sister of Pat Brasher and Norma Sumpter, sister-in-law of Jim Sumpter and Ron Brasher, sister of Thomas Lewis, aunt of David Brasher, aunt by marriage of Diane Brasher, aunt of Jennifer Hill and Melissa Sumpter. (EB Ex. 19.)
10. Thomas Lewis (hereinafter “Mr. Lewis”) supervises public safety installations at Metroplex, is the brother of Pat Brasher and Norma Sumpter, the brother-in-law of Ron Brasher and Jim Sumpter, the uncle of David Brasher, the brother of Carolyn Lutz, the

uncle of Jennifer Hill and Melissa Sumpter, and the uncle by marriage of Diane Brasher.
(EB Ex. 19.)

11. O.C. Brasher (hereinafter "O.C.") was the father of Ron Brasher, father-in-law of Pat Brasher, grandfather of David Brasher, and grandfather by marriage of Diane Brasher.
(EB Ex. 19.)

12. Ruth Brasher (hereinafter "Ruth") nee Bearden was the mother of Ron Brasher, mother-in-law of Pat Brasher, grandmother of David Brasher, and grandmother by marriage of Diane Brasher. (EB Ex. 19.)

13. Testimony at trial demonstrates that the above-named persons constituted a close family that spent much time with one another. (Tr. at 1793.) Carolyn, David, Thomas Lewis, Pat, Ron, Diane and David worked at Metroplex. (EB Ex. 19.) Jim was the accountant for Metroplex and the primary financial advisor to Metroplex, Pat and Ron. (EB Ex. 19) Norma worked in Jim's office and, along with Jennifer, worked on the Metroplex account. (EB Ex. 19.) Jennifer, Carolyn and Thomas received radio service from operation of the Metroplex system. (Tr. at 492-493, 743, 1046.) Norma and Pat went shopping together every Saturday, sometimes joined by Jennifer and Melissa. (Tr. at 1073.) Starting with Jim Sumpter's obtaining an end user license, and excepting Diane, all of the above named persons held an FCC license in their names at one time or another. The family exchanged pleasantries, gifts, telephone calls, visits, and conversation on a regular basis. "We were a very close family," testified Jim, (Tr. at 1793), and none of the witnesses denied this general observation.

14. In 1982, (Tr. at 752), Pat was working for a two-way radio company in Texas when she began looking into the possibility of starting a two-way radio business with her husband, Ron. (Tr. at 50.) Pat and two technicians with whom she worked, Jeff Graber and Ken Tinkle, wanted to know if the two-way radio business “would be a good business if [they] could do it.” (Tr. at 50.) Pat and Ron then asked Pat’s brother-in-law, Jim Sumpter, a certified public accountant, to “analyze a company which....potentially wanted to sell.” (Tr. at 50-51.) Jim analyzed the company in his accounting capacity and his advice to Pat and Ron was to “start your own company.” (Tr. at 50-51.) Jim advised Pat to “form a corporation for liability sake.” (Tr. at 1739-1740.)
15. After receiving Jim’s advice, Pat formed DLB Enterprises, d/b/a Metroplex Two Way Radio (hereinafter “Metroplex”) “with [Jim’s] help.” (Tr. at 752.) Pat “went and got the d/b/a name and the tax, all that type of stuff...[herself].” (Tr. at 752.) When Pat formed Metroplex, Pat was the President, David was named Vice President, Ron was named Treasurer and Diane was named Secretary. (Tr. at 752.) There have never been any directors of Metroplex and Pat and Ron are the only Metroplex shareholders, with Pat owning 60% of the stock and Ron owning 40%. (Tr. at 754.) When Jim prepared the corporate charter, (Tr. at 283), Ron and Pat did not “know that there was a need to have a director.” (Tr. at 754.) Ron’s “interpretation” was that an “officer and director [are] the same.” (Tr. at 283.)
16. Pat “call[s] the shots” at Metroplex and always has because “in the beginning...[Ron] was not on board.” (Tr. at 754, 1560.) When Metroplex was incorporated, Ron was working for Sears in Chicago as a “catalog director.” (Tr. at 48, 50). Two years later, in 1984,

Ron left Sears and “went to work for [Metroplex].” (Tr. at 49.) Before Ron worked for Metroplex, “Pat was responsible for everything.” (Tr. at 1557.) After Ron started in 1984, “they sort of split up duties. And Pat basically did financials and service. And Ron did sales and...marketing.” (Tr. at 1557, 1559-1560.)

17. When Metroplex started business in 1982, Jim was hired as the accountant for the company. (Tr. at 84, 1739.) Pat liked to hire relatives to work at Metroplex because she was a “family person” and “they all have needs.” (Tr. at 777.) When Jim was hired, “the Sumpters were...struggling to maintain their own identity. Their income was very, very low.” (Tr. at 85.) Norma Sumpter, who was working for Jim, (Tr. at 1987), also began working on Metroplex business in 1982. (Tr. at 2107.)
18. As Metroplex’s accountant, Jim assisted Pat in putting together all of Metroplex’s accounting procedures. (Tr. at 1870-1871.) Jim also did “monthly compilations for them; bookkeeping type work; and...filed the quarterly payroll reports; and the year-end income tax returns.” (Tr. at 1739.) Jim billed Metroplex a flat monthly rate and also gave advice on the hiring and firing of personnel “if it concerned – say the employment rates.” (Tr. at 1740.) Jim also gave tax advice on large asset purchases. (Tr. at 1741.) As Metroplex’s accountant, Jim regularly received certain items each month from Metroplex. (Tr. at 1745.) Metroplex “provided...the bank statement, the check stubs. At one time they gave [Jim] copies of invoices, and then after the[y] computerized their receivable systems, they gave [Jim] printouts of different types of revenue, and any tax form that came that had to be filled out, such as payroll taxes, whatever.” (Tr. at 1745, 2108.) Once Jim’s office received the invoices that Metroplex had sent to its customers, Jim’s office would break

- them down into different categories such as “repeaters, sales, tax, wholesale, parts.” (Tr. at 2108-2109.) Jim’s office would then “add up the different categories.” (Tr. at 2109.)
19. When Metroplex was formed, Jim, as their personal accountant, advised Pat and Ron to have two bank accounts, so Pat and Ron created a Brasher account and a Metroplex account to be used in conjunction with Metroplex’s business activities. (Tr. at 757, 760.) Jim believed this accounting system “would make it easy to track it for IRS if [Ron and Pat] had a separate account that [they] deposited the monies into from -- because [Metroplex] received the revenues from the income of the repeaters that [Pat and Ron] owned.” (Tr. at 757.) Jim’s advice to Pat and Ron regarding the separate bank accounts was “to get a separate account from [their] personal bank account.” (Tr. at 1916.) Pat, Ron, David and Diane all have check writing authority on the Metroplex account and Pat, Ron and Diane have check writing authority on the Brasher account. (Tr. at 1573.) Although they have check writing authority, neither Ron nor David has ever written a check from either account. (Tr. at 1575.)
20. Jim’s office set up the Metroplex account as a “day-to-day account for running the business, where the monies that customers send in that is deposited on a daily basis, also where the checks are paid for the outstanding bills and so on, as well as anything else for operation of the company.” (Tr. at 910, 1573-1574.) The Metroplex account paid the Brasher account a “rental charge for the use of the repeaters.” (Tr. at 1448, 1752, 1448.)
21. The “Brasher account was simply an account that the expenses were paid out of and the money was deposited into from this repeater rental.” (Tr. at 1575, 1751) Expenses included “tower lease fees” and “licensing fees” such as FCC filing fees. (Tr. at 1575.)

The Brasher account was used by Pat and Ron to buy the repeaters so that they could then take the depreciation for tax purposes. (Tr. at 1917.) To determine the rental expense for a repeater, Jim and Pat would “each year...sit down...and look at the amount of depreciation that [they] would have for the upcoming year, and that would help [them] set the amount of rental.” (Tr. at 1918.) Jim gave Metroplex advice on “how to use [the Brasher account] to remove cash from the corporation in...a tax advantageous manner.” (Tr. at 1450, 1918.)

22. Following Jim’s advice regarding Metroplex’s accounting structure had potential tax advantages for Pat and Ron. (Tr. at 1450-1451.) Because Pat and Ron own the repeaters and rent them to Metroplex, Pat and Ron can take money out of the company without that money being considered payroll. (Tr. at 1450.) Also, “it separates an asset from the company, and it enables them to sell the company if that were an issue, and retain that asset. Or if something were to happen to the company...litigation-wise, that asset would be theirs personally, and they would not stand to lose it.” (Tr. at 1451-1452.)
23. From 1982 to 1984, Metroplex’s business operations consisted of “purely install and repair for other companies.” (Tr. at 53.)
24. In April 1984, Diane began working at Metroplex in accounts receivable. (Tr. at 1538, 1542.) Her responsibilities included handling “accounts receivable, and customer relations.” (Tr. at 1542.) Diane has been the Corporate Secretary since Metroplex’s inception, (Tr. at 1539), and she is responsible for “taking the minutes of the corporate meetings. And minutes of any other meetings, as far as insurance, or [if] there have to be special meetings.” (Tr. at 1547.)

25. In 1985, Metroplex purchased GE's 800 MHz trunking system (hereinafter "the 800 MHz system") and acquired all of GE's customers receiving service on that system. (Tr. at 55.) The 800 MHz system was "pretty well loaded," almost to its full capacity, and "the only thing [Metroplex] did was add additional mobile[s] to customers who desired those." (Tr. at 55.) Metroplex also had GE's licenses assigned to it at that time. (Tr. at 55-56.) Jim had been receiving service as a customer of GE's before Metroplex purchased the 800 MHz system and he continued to receive service from Metroplex after the purchase. (Tr. at 370.) In fact, the testimony reveals that, among the Brashers and Sumpters, Jim Sumpter was the first FCC licensee. (Tr. at 563.) Even after Metroplex sold the 800 MHz system to Fleetcall, Jim continued to receive service from Fleetcall. (Tr. at 370-371.) Jim was "billed monthly fees" by GE, Metroplex, and Fleetcall to use the 800 MHz service, however Jim did not pay charges billed by Metroplex. (Tr. at 370-371.) Jim's end user license on the 800 MHz system was therefore, of no financial benefit to Metroplex. (Tr. at 563.) However, Jim testified that he was comfortable with his immediate family members participating in licensing stations in the late 80s and early 90s. (Tr. at 1953.)
26. Continuing with her practice of hiring family, (Tr. at 777), in January, 1986, Pat hired her sister, Ms. Lutz, to work at Metroplex. (Tr. at 777, 1132, 1150, 1230.) Ms. Lutz started working at Metroplex as a secretary/receptionist. (Tr. at 1132-1133, 1150, 1230.) At that time, Diane "relinquished a lot of the accounts receivable and went to accounts payable." (Tr. at 1543.)
27. In February, 1986, Diane left Metroplex to have a baby. (Tr. at 1149.)

28. In February, 1987, Diane returned to Metroplex. (Tr. at 1149-1150.) Diane “still did payroll, she assisted [Ms. Lutz] in the front desk areas. She [assisted] Ms. Lutz in the bill work. She also assisted Pat in many of the duties in the payables area....” (Tr. at 1150.)
29. Metroplex operated and maintained the 800 MHz system until it was sold in 1989, (Tr. at 405), for over \$400,000. (Tr. at 566.) When Metroplex sold the 800 MHz system, Metroplex received a profit of more than \$360,000 from the sale. (Tr. at 566.) The Sumpters were aware that there was a “substantial” profit made from the sale of the entire system, (Tr. at 1891, 2200), including “the repeaters, the customer list and all the equipment to operate, spare parts and everything.” (Tr. at 566-567.) Ron believes Ms. Lutz was also aware of the profit that was made, (Tr. at 567), even though she denies having that knowledge. (Tr. at 1231.) Ms. Lutz maintains she was unaware of the profit that was made from the sale of the 800 MHz system even though she was able to testify in detail regarding the “percentages of the different revenues that have been attributable to the different parts of the business of [Metroplex].” (Tr. at 1231-1232.) Jim was “a very important part” of the sale of the 800 MHz system because he organized the details of the sale in a tax advantageous manner. (Tr. at 567.) Jim “designed...how the division of the funds would be done and processed into the company, so much for goodwill, so much for the equipment and stuff like that, as a tax advisor to us. Jim...did that through his accounting firm.” (Tr. at 567.) Testimony did not reveal any assistance from an attorney in the negotiations or contract for sale, thus Jim Sumpter was the single professional advisor for the Brashers regarding the transaction.

30. In 1989, after Metroplex sold the 800 MHz system, Metroplex began acquiring licenses to create a 900 MHz system because Metroplex had a “noncompete” agreement regarding the provision of 800 MHz two-way radio service and needed a new system. (Tr. at 369-370.) With the help of Josie Lynch from NABER, (Tr. at 569), Pat and Ron “started obtaining frequencies in [their] names and started building the system up.” (Tr. at 568.)
31. In the fall of 1989, Metroplex installed a two-way radio with telephone interconnection in Jennifer’s car. (Tr. at 1046, 1743.) Jennifer “just used it for emergencies. [She] was told not to abuse it because it was a family favor and [Jim] didn’t want [her] to abuse it, so [she] only used it if [she] had an emergency.” (Tr. at 1097.) Thus Jim, a former end user licensee on the 800 MHz system, directed his daughter’s use of the 900 MHz radio unit.
32. On August 7, 1990, Norma applied for an end user radio license for use on the 900 MHz system to make proper Jennifer’s use of the two-way radio unit in her car. (Tr. at 368, 371, 389, 1988, 2117; EB Ex. 42 at 1.) Josie Lynch from NABER worked with Ron and Norma in preparing the application. (Tr. at 372.) Ron assisted Norma in “gathering the information and getting the forms prepared,” (Tr. at 376), but Norma paid the “processing fees and the FCC filing fees” on Jim’s “accounting firm checks” executed by Norma, (Tr. at 376, 1990, 2118; EB Ex. 42 at 2), indicating that Norma had authority to execute checks on behalf of Jim’s office. Ron claims to never have reimbursed Norma “any monies...as payment of those fees.” (Tr. at 386.) Norma, however, claims that she only applied as a favor to Pat and Ron. (Tr. at 2017.) Norma also claims that Metroplex wrote her a check to reimburse her for the processing and filing fees, (Tr. at 1991), but neither Norma nor the Bureau produced any evidence of that reimbursement.

33. On September 28, 1990, Norma was granted a 900 MHz end user license with the call sign WNSK580. (Tr. at 390, 2124; EB Ex. 42 at 4.) Norma's acquisition of the license was of no financial benefit to Metroplex. (Tr. at 565.) On June 9, 1991, Norma filed an 800A stating that the mobile units were no longer operational and requesting that the license be cancelled. (Tr. at 390, 2125-2126; EB Ex. 42 at 5.) Therefore, although the expiration date of the license was September 28, 1995, (Tr. at 390; EB Ex. 42 at 4), the license was no longer effective following June 9, 1991. (Tr. at 391; EB Ex. 42 at 5.)
34. After Norma was granted her license and started receiving mail that concerned FCC matters, (Tr. at 2077), Jim established a procedure at home and at his office, (Tr. at 1954-1955), whereby "all mail that came...that had to [do] with FCC was forwarded to [Ron]." (Tr. at 1844.) The Sumpters were on mailing lists and they received "all this mail" because of the licenses. (Tr. at 1953.) Vendors in the communications industry were able to access an applicant's information from publicly available sources after it was entered into the FCC's database. (Tr. at 1699.) It became "family practice to send [the mail] to [Ron] because [the Sumpters] continued to get [FCC mailings]." (Tr. at 1955.) When she received mail concerning FCC matters, Norma would call and ask Pat if she wanted the FCC mail "mailed to [Metroplex]" or "put it in the package coming to [Metroplex] next week or this week or whatever." (Tr. at 558.) Pat would usually tell Norma to just put it in the package. (Tr. at 558.) Norma would then send Pat, via mail or the package to Metroplex, (Tr. at 828), a "Xerox copy of whatever was sent" to Norma, Jim, Melissa or Jennifer, (Tr. at 559), presumably keeping the original. Since November, 1997, however,

- Jim “open[s] [the mail] and read[s] them though, [he] guarantee[s] you that....” (Tr. at 1955.)
35. On June 20, 1990, Ron’s mother, Ruth Bearden was granted a license for call sign KCG967 for operation in Dallas, TX. (EB Ex. 13 at 2.)
36. On April 22, 1991, Ruth passed away. (Tr. at 192; EB Ex. 12.)
37. On March 5, 1992, Maryanne Sims sent a letter, on the letterhead of Richard B. Schiro, to Ron enclosing a Durable Power of Attorney for Financial Matters of Oscar Colquitt Brasher. (RB/PB Ex. 2) This power of attorney grants Ron the power to manage O.C.’s financial affairs, (RB/PB Ex. 2 at 2), and Ron believes the power of attorney made him the custodian of O.C.’s assets. (Tr. at 602.) The Bureau’s handwriting expert, Ms. Gale Bolsover (hereinafter, “Ms. Bolsover”), believes that O.C. “probably wrote his signature as it appears in the durable power of attorney.” (Tr. at 2337.)
38. In 1992, Ron asked Ms. Lutz if she would apply for an end user license and Ron would “put a telephone in [her] car – a two way radio with a telephone interconnect capability in [her] car, and if [she] wanted it, he could put one in [her] husband’s, in [her] children’s car as well.” (Tr. at 1158.) Ms Lutz applied for the end user license and subsequently had a two-way radio unit installed in her car. (Tr. at 1158.)
39. On April 8, 1992, Norma applied for another 900 MHz end user license. (Tr. at 1992, 2127, 2224; EB Ex. 43 at 1.) The fees for that license were paid on April 7, 1992, with Jim’s “accounting firm checks” executed by Norma. (Tr. at 386-387, 1995, 2129-2130; EB Ex. 43 at 3.) Ron stated that neither Metroplex nor he reimbursed Norma for those fees. (Tr. at 387.) Norma claims that Metroplex did reimburse her for the fees because

Pat “brought [her] a check,” (Tr. at 1995, 2131), but neither Norma nor the Bureau offers any proof of the claimed reimbursement. On June 23, 1992, Norma was granted a 900 MHz end user license with the call sign WNZU648. (Tr. at 386-387, 1157; EB Ex. 43.) The license for call sign WNZU648 was modified on May 27, 1993 and the call sign changed to WPCF910. (Tr. at 381; EB Ex. 43 at 6-7; EB Ex. 44 at 1.) Metroplex did not receive any financial benefit from these licenses. (Tr. at 565-566.) Metroplex provided a two-way radio with telephone interconnection for Jennifer’s vehicle and billed the Sumpters approximately \$1400 for the use of the radio unit (Tr. at 1907), however, the Sumpters did not pay the bill for said radio service. (Tr. at 395.) Because it “was an extremely friendly association” and “these sisters were as close as you can possibly be,” Metroplex did not push to have the debt repaid. (Tr. at 404.) “Pat would never pressure Norma to pay that bill...knowing she would never get the money from Jim without a horrible situation, so they let it ride....[Pat and Ron] worked with Norma, [they] did a lot of things with [Norma and Jim]....[Pat and Ron] didn't subsidize [Norma and Jim], but [they] helped them get through some times....” (Tr. at 404.)

40. In 1992, Jennifer had the two-way radio unit removed from her car. (Tr. at 1046, 1094, 1180.) On the day the two-way radio unit was removed, Jennifer “had switched cars for the day with [Ms. Lutz], who worked for [Metroplex], and...[Jennifer] drove [Ms. Lutz’s] Toyota Camry and she took [Jennifer’s] little red car up to work and they took the phone out because the plan was when [Jennifer] got her new car that summer they were going to put the phone back in – or the two-way radio back in.” (Tr. at 1096, 1181.) When Jennifer bought her new car in August of 1992, Jim decided “he’d rather [Jennifer] just

have a regular real cell phone, so [they] went to Texas Cellular and they installed a cell phone inside [her] Pontiac car.” (Tr. at 1096) No testimony was offered by any of the witnesses to show that Ron knew of Jim’s decision not to have Metroplex’s two-way radio unit installed in Jennifer’s new car.

41. On March 24, 1993, Ron faxed Norma a letter for her signature requesting that “station WNZU648’s antenna site...be moved...before construction, due to antenna site problems.” (Tr. at 2139; RB/PB Ex. 9 at 8-10.) The quality of service on Jennifer’s two-way radio unit had been poor and Ron wanted to move an antenna in Tarrant County to get better reception. (Tr. at 2138-2139; RB/PB Ex. 9 at 9.) There was no testimony that Ron knew Jennifer no longer had the two-way radio unit in her car and Ron therefore, was not aware that he did not need to try to get Jennifer better reception for her two-way radio unit.
42. On March 24, 1993, Norma received the fax and signed the letter from Ron authorizing the modification. (Tr. at 2139-2140; RB/PB Ex. 9 at 9.) Included in the fax was also a signed copy of Norma’s February 4, 1993 application for modification of a license for call sign WNZU648. (Tr. at 2140; RB/PB Ex. 9 at 10; EB Ex. 43 at 6.) Norma did see her signature on the modification application when she received the fax, but was not even “a little bit curious” about whether or not the signature on the application was hers and she “didn’t pay that close attention to it.” (Tr. at 2141-2143.) Norma read the letter and understood that the antenna that was being moved was an antenna for a station licensed in her name. (Tr. at 2144.) Norma then faxed the signed letter back to Ron. (Tr. at 2143-2144; RB/PB Ex. 9 at 9.) Although now, eight years later, Norma denies having executed the application for modification, (Tr. at 2141; RB/PB Ex. 9 at 10), Norma admits signing

other documents, such as the letter requesting the antenna move, in support of that application for modification. (Tr. at 2139-2141; RB/PB Ex. 9 at 9.)

43. On October 18, 1994, the late Ruth Bearden's name was signed to an Assignment of Authorization for the call sign KCG967, assigning the station over to Ron. (Tr. at 223, 2304; EB Ex. 13 at 5.) The application appears to be "an assignment, a renewal, a modification of location, and increasing the mobile units." (Tr. at 1730.) There has been no direct testimony that Ron signed Ruth's name on that application. Even if Ron did sign Ruth's name on her October 18, 1994 application, Ron believed he had authority to sign Ruth's name as the executor of her estate. (Tr. at 225, 278.) On June 27, 1995, the requested assignment was granted. (Tr. at 224; EB Ex. 13 at 1.)
44. In late February 1994 or 1995, Thomas Lewis, began working for Metroplex, (Tr. at 529, 698, 707, 745), servicing Dallas Rapid Transit vehicles, (Tr. at 529, 682), continuing Pat's practice of hiring relatives to work for the family business. Mr. Lewis first applied for an end user license on the 900 MHz system approximately six months after he began working at Metroplex. (Tr. at 707.) After his end user license was issued, Mr. Lewis was given two two-way radio units with telephone interconnection for use in his vehicles. (Tr. at 708-709, 717-718, 726, 742-743.) One radio was installed in Mr. Lewis' vehicle by Mr. Lewis himself, and the other was installed in Mr. Lewis' vehicle by "one of the shop personnel." (Tr. at 743.) Metroplex also gave Mr. Lewis one hand-held radio to use solely for company use. (Tr. at 718, 742.) Mr. Lewis' mobile radio units were all operated in association with the 900 MHz system. (Tr. at 722.) Other employees and their family members were also sometimes given radio equipment to use in their cars as "kind of

a company gift” for both personal and work purposes. (Tr. at 710-712.) Because Metroplex employees would sometimes use their personal cars for work related activities, Metroplex installed radios in some of its employees’ personal cars so Metroplex and the employee would have a way to contact each other. (Tr. at 712.)

45. In early 1995, two large concrete companies (hereinafter “the concrete companies”) approached Metroplex and asked Metroplex to provide mobile data service. (Tr. at 97, 99, 112-113.) The concrete companies wanted “mobiles, they wanted something to work with them on figuring out what the truck would hold and when it was delivered and stuff like that. Mobile data would tell us that....[Metroplex] wanted to install the mobile data and provide the radio service.” (Tr. at 100.) The concrete companies were going to “try to develop the [mobile data] system and [Metroplex] would need to have the frequency, the spectrum by the time they finished that in order to implement it.” (Tr. at 101.) The mobile data is “data like on-site time, date, and truck number, and each time they send it, that same information goes out and inside the batch room there is a big computer which moves kind of a marker across and that indicates where that truck is moving or has done its activity towards the end, which would be coming back to the batching plant.” (Tr. at 577.) The mobile data system would “incorporate...Command Data input into the radio system that [Metroplex] would use off of the soon-to-be-acquired T-band system.” (Tr. at 577.) Command Data “is a mobile data terminal that is unique for concrete” that “ties in to the radio that once the vehicle is at the batching plant, and the batching plant is what fixes and mixes up the concrete and gets ready to pour it in the truck, a truck lines up to have its mixer filled with concrete, once it's there, it keys on Command Data equipment,

which goes through the radio and it broadcasts back to central dispatch that he is loading up, getting ready to leave. Once he pulls out of the yard, he has to hit those keys again and the radio will transmit back to the repeater site and then back out to where the central dispatch is.” (Tr. at 576-577.) Metroplex was attempting to put together a “mobile data system tied in with the radio that would meet their desires and that is [to] know where their trucks are at all times, picking up the mix and delivering it to the customer and getting back” with approximately 600-700 mobile units. (Tr. at 578-579.)

46. Metroplex needed to have their new system in place “hopefully in ‘96,” and so after Metroplex was approached by the concrete companies in early 1995, Pat, Ron, David, Diane, and Metroplex’s sales manager, Randy Stafford (hereinafter “Mr. Stafford”), decided they needed to obtain additional radio spectrum to meet the needs of these concrete companies. (Tr. at 103.)
47. When Metroplex was approached by the concrete companies, the only suitable spectrum that appeared to be available was in the 470 to 512 MHz frequency range (hereinafter “T-band”). (Tr. at 104.) The T-band met the needs of the concrete companies, who had to have “private, private conversations” and there was no 800 or 900 MHz spectrum available. (Tr. at 104.) According to PCIA, “once a [T-band] channel reaches a loading limit of 90 units, the channel is not available for reassignment within 40 miles.” (Tr. at 2256.) After discussing options with Pat, David, Diane and Mr. Stafford, Ron authorized John Black (hereinafter “Mr. Black”) of Spectrum Licensing to “search the FCC’s records or whatever records to determine what frequencies were available that [Ron] could apply for.” (Tr. at 104.) Spectrum Licensing “performs application preparation searches,” (Tr.

at 1623), and has been in business since 1981, but Mr. Black has knowledge of the FCC licensing system dating back to 1960. (Tr. at 1679.) Mr. Black performs “frequency searches” and “some technical services in the way of providing contour studies, propagation studies, various technical calculations like HAAT, ERP, et cetera....” (Tr. at 1623.) Mr. Black explained his function as “almost parallel to that of a CPA. It’s fully legal for you to do your own income taxes, but most people in this day and age defer to a CPA because they don’t have time and expertise to mess with that process. They don’t have the time and expertise to do licensing.” (Tr. at 1680.) Mr. Black believed Ron lacked the experience or knowledge to do the licensing himself. (Tr. at 1680-1681.)

48. In 1995, employing Mr. Black’s services, Ron applied for a radio license for five channels in the T-band in the Dallas, Texas area for use in conjunction with the mobile data system sought by the concrete companies. (Tr. at 581; EB Ex. 19 at 359, 366.) At that time, Pat applied for a T-band license in the Dallas area to set up the “Dallas central location.” (Tr. at 582.)
49. The Dallas channels for which Pat and Ron applied were insufficient to serve the needs of the concrete companies and Metroplex “knew that once these companies hit that, that system was dead in the water. [The channels] couldn’t handle it because we were talking about 700 or 800 mobiles.” (Tr. at 101-102.)
50. In May, 1995, Ms. Lutz left Metroplex “to get a better job.” (Tr. at 1132-1133.)
51. In 1995, O.C. Brasher was living with Pat and Ron. (Tr. at 289.) O.C. knew about Metroplex’s planned expansion into Allen, Texas because of numerous conversations at the dinner table with Ron and Pat about what Metroplex needed to expand into Allen. (Tr.

at 804.) O.C. was “very much into [Pat and Ron’s] business. (Tr. at 804.) [Pat and Ron] were his life.” (Tr. at 804.) Pat, Ron and O.C. decided to apply for a license to place a station in Allen, Texas. (Tr. at 289.) O.C.’s station was going to test “how far north” the frequency coverage would reach from the Allen, Texas site. (Tr. at 289-290.) In the last couple months before he died, although his “abilities to get in and out of bed and things like that” had deteriorated, his mind did not. (Tr. at 804.) O.C. “was a very alert person, a very learned person. He read constantly. He read the newspapers....he was very astute in that regard....he got to the point that he was bedridden, but his mind was all right.” (Tr. at 804.)

52. On June 29, 1995, O.C. signed an application (Tr. at 335.), prepared by Mr. Black, (Tr. 1652-1653), for authority to operate on the frequency pair 484/487.0125 MHz from the Allen, Texas location, (hereinafter “O.C.’s 1995 application”). (EB Ex. 68.) On August 17, 1995, O.C. passed away. (Tr. at 345; EB Ex. 6.) A license with the same technical parameters and the same frequency pair was eventually granted in the name of O.C. Brasher on September 25, 1996. (EB Ex. 4.)
53. O.C.’s 1995 application lists Mr. Black as the contact representative, (Tr. at 1652), and shows Mr. Black’s address to be located in Lewisville, Texas. (Tr. at 1654; EB Ex. 68, p.1.) On either July 1 or August 1 of 1995, Mr. Black moved from Lewisville, Texas to Santa Fe, New Mexico. (Tr. at 1654.)
54. On October 7, 1995, Jennifer married Heath Hill and changed her last name to Hill. (Tr. at 1120; EB Ex. 56.)

55. As before, throughout 1996, Norma's duties at Jim's office included "bookkeeping" for Metroplex. (Tr. at 1870.) Jim's accounting firm would "receive the bank statement along with the check stubs....there was a time that [they] received the total invoices and then there was a time [they] received accounts receivable listing for that period. And [Norma's] duties would be to reconcile the bank account back to the checkbook; code the checks out into the various expense accounts...what [they] would call a sales entry either from the sales invoices or from the accounts receivable computer run or listing, and then enter that into the computer, and draw out financial statements for [Jim's] review." (Tr. at 1870.) In the 1995 to 1997 time frame, Norma "was secretary....answered the phone....did bank reconciliations....a little bit of everything." (Tr. at 2106.)
56. In February or March of 1996, Pat spoke with Norma on the phone and asked her if Norma and Jim would be interested in obtaining radio licenses. (Tr. at 399-400.) "The Sumpters knew that [Metroplex] had a big project coming up because they are always notified of all large purchases, repeaters and everything else, and the future of [Metroplex's] business. Jim and Norma knew this well in advance...how [Metroplex] does because Jim has provided [Metroplex] financial guidance all along for years and years." (Tr. at 399.) Jim would "advise...[Metroplex] what...to do in regards to...inventory." (Tr. at 815.) Pat testified that Jim would say, "[y]ou're going to have a lot of inventory unless you've got a big sale at the end of the year." (Tr. at 815-816.) Pat asked Jim for advice on the timing of purchases, such as purchase of equipment or purchase of inventory. (Tr. at 813.) Whatever Jim's advice was, Pat would take it. (Tr. at 816.) Pat and Jim "were very close in [their] business relation. [Pat] never hesitated to call and discuss anything."